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6 UNITED STATES DISTRICT COURT  
7 DISTRICT OF NEVADA

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9 DISCOVER GROWTH FUND, LLC,

Case No. 3:22-cv-00427-LRH-CSD

10 Plaintiff,

ORDER

11 v.

12 CLICKSTREAM CORPORATION,

13 Defendant.

14 Before the Court is Defendant Clickstream Corporation's ("Clickstream") 12(b)(6) Motion  
15 to Dismiss. ECF No. 5. Plaintiff Discover Growth Fund, LLC ("Discover") opposed the motion  
16 (ECF No. 12) and Clickstream replied to the opposition (ECF No. 14). Also before the Court is  
17 Clickstream's Motion to Transfer Venue (ECF No. 8) which Discover opposed (ECF No. 13) and  
18 Clickstream replied (ECF No. 15). Before reaching the merits of either motion, the Court dismisses  
19 the action with leave to amend for lack of subject matter jurisdiction. Discover shall file an  
20 Amended Complaint no later than July 17, 2023, to cure the subject matter jurisdiction deficiency  
21 stated herein. The Court reserves ruling on the pending motions until after Discover files an  
22 Amended Complaint.

23 This matter primarily involves a contractual dispute stemming from Clickstream's alleged  
24 failure to repay money owed to Discover. Around November 2021, Clickstream allegedly sought  
25 to borrow money from Discover. ECF No. 1 at 2. The parties agreed to the transaction and  
26 Clickstream drafted a promissory note which outlined the terms and conditions of their agreement  
27 (the "Note"). *See id.*; *see also* ECF No. 8 at 3. The Note required Clickstream to repay Discover a  
28 principal sum of \$600,000—subject to an "Original Issuers Discount of 20%"—plus accrued

1 interest by May 16, 2022 (the “Loan”). ECF No. 1-1 at 2. According to Discover, Clickstream  
 2 failed to repay the Loan by the agreed upon deadline. ECF No. 1 at 3. As a result, Discover filed  
 3 its Complaint in United States District Court for the District of Nevada alleging that Clickstream  
 4 (1) breached the Note by failing to repay the Loan; (2) intentionally misrepresented that the Note’s  
 5 terms were legal and acceptable to induce the Loan; (3) was unjustly enriched as a result of the  
 6 Loan; (4) engaged in deceptive trade practices concerning the Loan; and (5) breached the implied  
 7 covenant of good faith and fair dealing. *Id.* at 3–8.

8 In the Complaint, Discover alleges that the Court has original jurisdiction over the matter  
 9 pursuant to 28 U.S.C. § 1332(a)(2) because complete diversity of citizenship exists between the  
 10 parties and the amount in controversy exceeds \$75,000. ECF No. 1 at 2. A district court has original  
 11 jurisdiction over civil actions where the suit is between citizens of different states and the amount  
 12 in controversy, exclusive of interests and costs, exceeds \$75,000.00. 28 U.S.C. § 1332(a). “The  
 13 party seeking to invoke the court's jurisdiction bears the burden of establishing that jurisdiction  
 14 exists.” *Scott v. Breeland*, 792 F.2d 925, 927 (9th Cir. 1986). For purposes of diversity, a limited  
 15 liability company is a citizen of all states where its members are citizens. *Johnson v. Columbia*  
 16 *Propes. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006) (“an LLC is a citizen of every state of  
 17 which its owners/members are citizens.”).

18 Here, the Court finds that Discover has failed to meet its burden of establishing that  
 19 complete diversity exists. Discover states that it “is a limited liability company organized under  
 20 the laws of the United States Virgin Islands (‘USVI’) with its principal place of business in St.  
 21 Thomas, USVI.” ECF No. 1 at 1. Discover, a limited liability company, has failed to allege  
 22 diversity because it has not identified its members, the citizenship of its members, whether its  
 23 members are comprised of additional business entities, and the citizenship of those entities.  
 24 Without adequately identifying the citizenship of its members, a limited liability company fails to  
 25 sufficiently establish complete diversity. *See Segundo Suenos, LLC v. Jones*, 494 F. App'x 732,  
 26 735 (9th Cir. 2012) (holding that alleged subject matter jurisdiction based on diversity was “legally  
 27 deficient” because the complaint contained “no allegations setting forth the citizenships of the  
 28 constituent members of the limited liability company”); *see also Lindley Contours, LLC v. AABB*

1 *Fitness Holdings, Inc.*, 414 F. App'x 62, 64 (9th Cir. 2011) (remanding to district court with  
2 instructions to vacate its orders and remand to state court because appellees did not identify the  
3 citizenship of each limited liability company member and limited liability partnership partner and,  
4 as such, failed to adequately plead complete diversity).


5 Without more information regarding Discover's members, specifically the identification  
6 and citizenship of each member, the Court finds that Discover has failed to adequately allege  
7 complete diversity. Therefore, the Court lacks subject matter jurisdiction over the current matter.  
8 "If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss  
9 the action." Fed. R. Civ. P. 12(h)(3). For these reasons, the Court dismisses Discover's Complaint  
10 for lack of subject matter jurisdiction. However, "[d]efective allegations of jurisdiction may be  
11 amended, upon terms, in the trial or appellate courts." 28 U.S.C § 1653. Moreover, dismissing an  
12 action without leave to amend "is improper unless it is clear [ . . . ] that the complaint could not be  
13 saved by any amendment." *Intri-Plex Techs., Inc. v. Crest Grp., Inc.*, 499 F.3d 1048, 1056 (9th  
14 Cir. 2007). Here, the Court finds that amendment may save the stated diversity jurisdiction  
15 deficiency.

16 IT IS THEREFORE ORDERED that Discover's Complaint is dismissed, with leave to  
17 amend, for lack of subject matter jurisdiction. Discover shall file an Amended Complaint, if any,  
18 no later than July 17, 2023. Failure to do so may result in dismissal of this action without prejudice.

19 IT IS FURTHER ORDERED that the Court reserves ruling on the pending motions—  
20 12(b)(6) Motion to Dismiss (ECF No. 5) and Motion to Transfer Venue (ECF No. 8)—until the  
21 Amended Complaint is filed and subject matter jurisdiction is adequately pled.

22 IT IS SO ORDERED.

23 DATED this 27<sup>th</sup> day of June, 2023.

24   
25 LARRY R. HICKS  
26 UNITED STATES DISTRICT JUDGE  
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